

**A Nestle Products Sdn Bhd v Mad Labs Sdn Bhd & Anor and
another case**

B HIGH COURT (KUALA LUMPUR) — CIVIL SUIT
NOS WA-22IP-31-04 OF 2019 AND WA-22IP-85-12 OF 2019
MOHD RADZI J
30 DECEMBER 2020

C *Civil Procedure — Striking out — Appeal — Writ and statement of claim
— Powers exercised by the court — Whether the plaintiff had a reasonable cause
of action — Duty to prevent abuse of process — Rules of Court 2012 O 18
r 19(1)(a), (b) and (d)*

D This was the second defendant's Civil Suit No WA-22IP-31-04 of 2019
application to strike out the plaintiff's writ and statement of claim in pursuant
to O 18 r 19(1)(a)(b) and (d) of the Rules of Court 2012 ('the Rules'). The
plaintiff's action against the second defendant was for the following torts:
E (a) negligence; (b) unlawful interference with the plaintiff's trade and/or
business with the intention to injure the plaintiff's goodwill and reputation;
and (c) defamation and trade libel. The plaintiff contended that the second
defendant, being the sole director of the first defendant, Mad Labs Sdn Bhd,
was the controller, alter ego and 'directing mind and will' of the first defendant.
F Thus, the second defendant was jointly and severally liable with the first
defendant for the abovementioned torts. The second defendant contended that
although he was appointed as the first defendant's director since 2013, at all
times he had acted for the first defendant as a director and not in his personal
capacity throughout the dealings between the first defendant and the plaintiff.
G The second defendant further contended that he became the first defendant's
sole director only beginning the end of November 2018 onwards. The facts and
events that formed the basis of the plaintiff's action in the suit had transpired
prior to that period. Thus the second defendant pleaded that the plaintiff had
failed to plead sufficient details, facts and particulars to establish a valid and/or
H reasonable cause of action against the second defendant to be held personally
liable as a joint tortfeasor with the first defendant.

Held, dismissing the application with costs:

I (1) The court must adopt the position that the wider the power granted to
this court, the more stringent the court should be in exercising such wide
powers. The court should be very selective in allowing application made
under this provision as it was, in essence, a power to stop an action from
proceeding. This court can only opt to apply the provision to set aside an

- action when it can clearly be seen by this court that the plaintiffs' claim, on the face of it, was obviously unsustainable (see paras 8–9). A
- (2) In determining whether or not it would be appropriate to invoke O 18 r 19(1), the court must not only scrutinise the cause papers pertaining to this application, but also the writ and the statement of claim which contains the plaintiffs' main application. But time and again, the courts had set out the rule clearly that such scrutiny cannot tantamount to and similar to this court hearing that main application (see para 11). B
- (3) How does the court determine that the plaintiff had a reasonable cause of action, the court relied on the legal principle enunciated by the Court of Appeal in *See Thong & Anor v Saw Beng Chong* [2013] 3 MLJ 235; [2012] 1 LNS 817 where the judge must be satisfied that the statement of claim as it stands was insufficient and unsustainable. The court was satisfied that the issues pleaded by the plaintiff in its statement of claim had disclosed reasonable cause of action (see paras 14–15). C D
- (4) The court was cognisant of the legal position that it had a legal duty to prevent any form of abuse of the court process which could fall within any of the endless and broad categories of abuse. It was the finding of this court that the abuse as enumerated by a plethora of authorities had not been shown in this instance by the second defendant against the plaintiff's action (see paras 22–23). E

[Bahasa Malaysia summary]

Ini adalah saman sivil defendan kedua Guaman Sivil No WA-22IP-31-04 Tahun 2019 dalam permohonan untuk membatalkan writ dan pernyataan tuntutan plaintiff selaras dengan A 18 k 9(1)(a)(b) dan (d) Kaedah-Kaedah Mahkamah 2012. Tindakan plaintiff adalah terhadap defendan kedua adalah untuk tort berikut: (a) kecuai; (b) campur tangan tidak sah dengan perniagaan dan/atau perdagangan dengan niat untuk mencederakan nama baik atau reputasi; dan (c) libel perdagangan dan fitnah. Plaintiff mengatakan bahawa defendan kedua, iaitu pengarah tunggal defendan pertama, Mad Labs Sdn Bhd, merupakan pengawal, *alter ego*, dan 'directing mind and will' defendan pertama. Oleh itu, defendan kedua adalah secara bersama dan berasingan bertanggung dengan defendan pertama untuk tort yang dinyatakan di atas. Defendan kedua menyatakan bahawa walaupun dia telah dilantik sebagai pengarah defendan pertama sejak 2013, pada setiap masa dia bertindak untuk defendan pertama sebagai pengarah dan bukan dalam kapasiti peribadinya melalui urusan antara defendan pertama dan plaintiff. Defendan kedua turut mengatakan bahawa dia telah menjadi pengarah tunggal defendan pertama hanya sejak akhir November 2018. Fakta dan kejadian yang membentuk asas tindakan plaintiff dalam guaman ini bermula sebelum tempoh tersebut. Oleh itu, defendan kedua memplidkan bahawa plaintiff gagal untuk memplidkan butiran yang mencukupi, fakta dan perincian untuk F G H I

A mewujudkan kausa tindakan yang sah dan/atau munasabah terhadap defendan kedua untuk bertanggung secara peribadi sebagai seorang pelaku tort dengan defendan pertama.

Diputuskan, menolak permohonan dengan kos:

- B (1) Mahkamah harus mengambil kedudukan bahawa semakin luas kuasa yang diberikan kepada mahkamah ini, mahkamah haruslah bertindak dengan lagi ketat apabila menggunakan kuasa tersebut. Mahkamah harus sangat memilih dalam membenarkan permohonan yang dibuat di bawah peruntukan ini kerana ianya merupakan satu kuasa untuk menghalang satu tindakan daripada diteruskan. Mahkamah ini hanya boleh memilih untuk menggunakan peruntukan untuk membatalkan satu tindakan apabila ianya jelas bahawa tuntutan plaintif tidak boleh ditampung (lihat perenggan 8–9).
- C
- D (2) Dalam menentukan sama ada ianya bersesuaian untuk menggunakan A 18 k 19(1), mahkamah bukan sahaja harus meneliti kertas kausa berkaitan dengan permohonan ni, tetapi juga writ dan pernyataan tuntutan yang mengandungi permohonan utama plaintif. Namun mahkamah telah menetapkan bahawa penelitian tersebut tidak boleh terjumlah kepada dan sama dengan mahkamah mendengar permohonan utama tersebut (lihat perenggan 11).
- E
- F (3) Bagaimana mahkamah menentukan bahawa plaintif mempunyai kausa tindakan munasabah, mahkamah bergantung kepada prinsip undang-undang yang dinyatakan Mahkamah Rayuan dalam *See Thong & Anor v Saw Beng Chong* [2013] 3 MLJ 235; [2012] 1 LNS 817 dimana hakim perlu berpuas hati dengan pernyataan tuntutan bersendirian adalah tidak memadai dan tidak boleh ditampung. Mahkamah berpuas hati bahawa isu yang dihidang oleh plaintif dalam pernyataan tuntutannya telah menunjukkan kausa tindakan munasabah (lihat perenggan 14–15).
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- H (4) Mahkamah sedar dengan kedudukan perundangan bahawa ianya mempunyai tanggungjawab disisi undang-undang untuk menghalang apa-apa penyalahgunaan proses mahkamah yang boleh terjumlah kepada mana-mana daripada kategori luas penyalahgunaan. Ianya adalah dapatan mahkamah ini bahawa satu penyalahgunaan yang dinyatakan dalam pelbagai otoriti tidak ditunjukkan dalam keadaan ini oleh defendan kedua terhadap tindakan plaintif (lihat perenggan 22–23).]

Cases referred to

- I *AIC Dotcom Sdn Bhd (suing in a representative capacity for MTEX Corp Sdn Bhd) v MTEX Corp Sdn Bhd* [2003] 4 MLJ 324, HC (refd)
Abdul Hamid bin Hj Rahmat & Anor v Development & Commercial Bank Bhd & Anor [1993] 1 MLJ 306, HC (refd)
Bandar Builder Sdn Bhd and Ors v United Malayan Banking Corporation Bhd

- [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (folld) A
Boey Oi Leng (t/a Indah Reka Construction & Trading) v Trans Resources Corporation Sdn Bhd [2001] MLJU 566; [2001] 4 AMR 4807, HC (refd)
CC Ng & Brothers Sdn Bhd v Government of The State of Pahang [1985] 1 MLJ 347; [1985] CLJ Rep 45; [1985] 1 CLJ 235, FC (refd)
Datuk Ooi Han Eng & Anor v Soh Huang Siah (carrying on business through an organisation known as Alaric's Productions Co) [2010] 5 MLJ 665, CA (refd) B
EON Bank Bhd v Cepad Group Sdn Bhd & Ors [2006] 4 MLJ 362, HC (refd)
Godrej Sara Lee Ltd v Siah Teong Teck & Anor (Part 1) [2007] 7 MLJ 153, HC (refd)
Hadi bin Hassan v Suria Records Sdn Bhd & Ors [2005] 3 MLJ 522; [2004] 8 CLJ 225, HC (refd) C
Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd [2011] 2 MLJ 192; [2011] 1 CLJ 285, CA (refd)
Hup Lee Coachbuilders Holdings Sdn Bhd v Cycle & Carriage Bintang Bhd [2013] 1 MLJ 406, CA (refd) D
Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor [2008] 2 MLJ 11; [2008] 1 CLJ 651, CA (refd)
Lim Eng Heng v Lim Sam Keow [2003] MLJU 47, HC (refd)
Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16; [1993] 3 CLJ 606, SC (refd) E
See Thong & Anor v Saw Beng Chong [2013] 3 MLJ 235; [2012] 1 LNS 817, CA (folld)
Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd [2013] 5 MLJ 1; [2013] 6 CLJ 673, FC (refd) F
Seruan Gemilang Makmur Sdn Bhd v Badan Perhubungan UMNO Negeri Pahang Darul Makmur (via his secretary Dato' Ahmad Tajudin bin Sulaiman) [2010] 8 MLJ 57, HC (refd)
Sim Kiang Chiok v South East Asia Special Asset Management Bhd [2016] 1 MLJ 57, CA (refd) G
Sivakumar all Varatharaju Naidu v Ganesan all Retanam [2011] 6 MLJ 70, CA (refd)
Tractors Malaysia Bhd v Tio Chee Hing [1975] 2 MLJ 1; [1975] 1 LNS 133, PC (refd)
Vivaganth a/l Santharasilan v Public Bank Bhd [2019] 3 MLJ 691; [2018] 1 LNS 932, CA (refd) H
Yeng Hing Enterprise Sdn Bhd v Liow Su Fah [1979] 2 MLJ 240, FC (refd)

Legislation referred to

Rules of Court 2012 O 18 r 19, 19(1), (1)(a), (1)(b), (1)(d) I

Stanley Lee Wai Jin (Zaid Ibrahim & Co) for the plaintiff.
Jasneeta Bhullar (Azmi Fadzly Maha & Sim) for the second defendant.

A Mohd Radzi J:

BACKGROUND

B [1] Chow Kien Loon, the second defendant in Civil Suit No WA-22IP-31-04 of 2019 applied to strike out the plaintiff's writ and statement of claim pursuant to O 18 r 19(1)(a), (b) and (d) of the Rules of Court 2012 ('the Rules').

C [2] Chow Kien Loon was aggrieved with this court's decision in dismissing his striking out application and filed this appeal. Here are my grounds.

[3] For purposes of this grounds, I shall refer to Nestle Products Sdn Bhd as the plaintiff and Chow Kien Loon as D2.

D THE PLAINTIFF'S CASE

[4] The plaintiff's action against D2 was for the following torts:

- E**
- (a) negligence;
 - (b) unlawful interference with the plaintiff's trade and/or business with the intention to injure the plaintiff's goodwill and reputation; and
 - (c) defamation and trade libel.

F [5] The plaintiff contended that D2, being the sole director of the first defendant, Mad Labs Sdn Bhd, is the controller, alter ego and 'directing mind and will' of the first defendant. Thus, D2 is jointly and severally liable with the first defendant for the abovementioned torts.

G THE DEFENDANTS' CASE

H [6] D2 contended that although he has been appointed as the first defendant's director since 2013, at all times he has acted for the first defendant as a director and not in his personal capacity throughout the dealings between the first defendant and the plaintiff. D2 further contended that he became the first defendant's sole director only beginning the end of November 2018 onwards. The facts and events that formed the basis of the plaintiff's action in the suit had transpired prior to that period.

I [7] D2 pleaded that the plaintiff has failed to plead sufficient details, facts and particulars to establish a valid and/or reasonable cause of action against D2 to be held personally liable as a joint tortfeasor with the first defendant. Consequently, the plaintiff cannot purport nor entitle to pierce the corporate

veil of the first defendant by dragging D2 in its action merely on the basis that D2 had represented the first defendant at various meetings between the first defendant and the plaintiff.

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ENCLOSURE 10: STRIKING OUT

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[8] Order 18 r 19 of the ROC 2012 provides me with very wide powers to decide on this application. But it is settled law that I must adopt the position that the wider the power granted to this court, the more stringent I should be in exercising such wide powers. I should be very selective in allowing application made under this provision as it is, in essence, a power to stop an action from proceeding. This is the principle set out by the Federal Court in *CC Ng & Brothers Sdn Bhd v Government of The State of Pahang* [1985] 1 MLJ 347; [1985] CLJ Rep 45; [1985] 1 CLJ 235, where the court said:

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The inherent power to dismiss an action summarily without permitting the plaintiff to proceed to trial is a drastic power. It should be exercised with utmost caution. It is a power which ought to be very sparingly exercised and only in very exceptional cases.

D

[9] Not only must this court be very jealous in exercising this power, this court can only opt to apply the provision to set aside an action when it can clearly be seen by this court that the plaintiffs' claim, on the face of it, is obviously unsustainable. This principle was laid down by the Supreme Court in the celebrated case of *Bandar Builder Sdn Bhd and Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7 when Mohamed Dzaiddin Abdullah, SCJ (as His Lordship then was) read out the oft-quoted decision as follows:

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The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) Rules of the High Court are well settled. *It is only in plain and obvious cases that recourse should be had to the summary process under this rule* (per Lindley MR in *Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899] 1 QB 86, p 91), *and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable'* (attorney general of *Attorney-General of the Duchy of Lancaster v London and North Western Railway Company* [1892] 3 Ch 274 (CA)). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (*Wenlock v Moloney and Others* [1965] 1 WLR 1238; [1965] 2 All ER 871 (CA)). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 (which is in para materia with our O 33 r 2 of the Rules of the High Court) (*Hubbuck & Sons v Wilkinson, Heywood and Clark*). *The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.* (Emphasis added.)

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A [10] The Federal Court in *Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd* [2013] 5 MLJ 1; [2013] 6 CLJ 673 affirmed the principle laid down in *CC Ng & Brothers* and *Bandar Builder* and expounded the principle further when the court held:

B ... Although the power to strike out is a wide discretion, it should be exercised with care and only when the threshold requirement of ‘an obvious and unsustainable case’, can a pleading be struck out ... *The court should also bear in mind that the effect of striking out a pleading is to completely deprive a plaintiff from having his day in court.* (Emphasis added.)

C [11] In determining whether or not it would be appropriate to invoke O 18 r 19(1), this court must not only scrutinise the cause papers pertaining to this application, but also the writ and the statement of claim which contains the plaintiffs’ main application. But time and again, the courts had set out the rule
 D clearly that such scrutiny cannot tantamount to and similar to this court hearing that main application.

[12] The Supreme Court in *Bandar Builder* had set out that principle as follows:

E It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence.

The Court of Appeal in a recent decision in *Vivaganth a/l Santharasilan v Public Bank Bhd* [2019] 3 MLJ 691; [2018] 1 LNS 932 reaffirmed this legal position
 F where it decided:

The established principles are quite clear that in a summary process under O 18 r 19, the court should not conduct a minute examination of the documents and facts in order to ascertain whether the plaintiff has a cause of action.

G ORDER 18 R 19(1)(a)

[13] In considering an application under O 18 r 19(1)(a) as per D2’s encl 8, this court first of all applied the time-tested principle set out by the Federal Court in *Serac Asia Sdn Bhd v Sepakat Insurance Brokers Sdn Bhd* [2013] 5 MLJ 1; [2013] 6 CLJ 673. In that case, the court held that when application is made
 H pursuant to O 18 r 19(1)(a), not only must I apply the well-known tests laid down in *Bandar Builder*, but more importantly I must ‘have regard to the quality of and all the circumstances surrounding the plea ... and also bear in mind that the effect of striking out a pleading is to completely deprive a
 I plaintiff from having his day in court’.

[14] The next question is how do I determine that the plaintiff has a reasonable cause of action? I relied on the legal principle enunciated by the Court of Appeal in *See Thong & Anor v Saw Beng Chong* [2013] 3 MLJ 235;

[2012] 1 LNS 817, where Ramly Ali JCA (as His Lordship then was) in delivering the decision of the court stated the following:

A

The learned judge must bear in mind that striking out a claim for no reasonable cause of action under sub-para (1)(a) is only appropriate in a plain and obvious case. *The learned judge must be satisfied that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiffs to the relief which they asked for ... Just look at the statement of claim. The test to be applied is whether on the face of the statement of claim, the court is prepared to conclude that the cause of action is obviously unsustainable.* (Emphasis added.)

B

[15] I had done exactly that. I had looked at the plaintiff's writ and the statement of claim. I am satisfied that the issues pleaded by the plaintiff in its statement of claim, as I had summarised in the paras above, had disclosed reasonable cause of action.

C

[16] D2's invocation of O 18 r 19(1)(a) must fail.

D

ORDER 18 R 19(1)(b)

[17] 'Scandalous' was decided to mean wholly unnecessary and irrelevant, not just unpleasant allegations: *Boey Oi Leng (t/a Indah Reka Construction & Trading) v Trans Resources Corporation Sdn Bhd* [2001] MLJU 566; [2001] 4 AMR 4807; *Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd* [2011] 2 MLJ 192; [2011] 1 CLJ 285; *Godrej Sara Lee Ltd v Siah Teong Teck & Anor (Part 1)* [2007] 7 MLJ 153; *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11; [2008] 1 CLJ 651; *Sivakumar all Varatharaju Naidu v Ganesan all Retanam* [2011] 6 MLJ 70.

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[18] The following illustrations had been decided to come within the meaning of the term 'frivolous or vexatious':

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- (a) no locus standi: *AIC Dotcom Sdn Bhd (suing in a representative capacity for MTEX Corp Sdn Bhd) v MTEX Corp Sdn Bhd* [2003] 4 MLJ 324; *Hup Lee Coachbuilders Holdings Sdn Bhd v Cycle & Carriage Bintang Bhd* [2013] 1 MLJ 406;
- (b) res judicata: *Abdul Hamid bin Hj Rahmat & Anor v Development & Commercial Bank Bhd & Anor* [1993] 1 MLJ 306; *Seruan Gemilang Makmur Sdn Bhd v Badan Perhubungan UMNO Negeri Pahang Darul Makmur (via his secretary Dato' Ahmad Tajudin bin Sulaiman* [2010] 8 MLJ 57; *Datuk Ooi Han Eng & Anor v Soh Huang Siah (carrying on business through an organisation known as Alaric's Productions Co)* [2010] 5 MLJ 665;
- (c) wrong party is sued: see *Yeng Hing Enterprise Sdn Bhd v Liow Su Fah*

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- A [1979] 2 MLJ 240;
- (d) illegality: *Lim Eng Heng v Lim Sam Keow* [2003] MLJU 47;
- (e) unfounded claims: *EON Bank Bhd v Cepad Group Sdn Bhd & Ors* [2006] 4 MLJ 362; or
- B (f) claim is statute barred: *Sim Kiang Chiok v South East Asia Special Asset Management Bhd* [2016] 1 MLJ 57.
- C [19] Having perused the D2's grounds for his application under this limb, this court does not find that the plaintiff's cause of action fall under any of the illustrations above for it to be scandalous, frivolous or vexatious. D2's claim under O 18 r 19(1)(b), therefore, failed.
- D ORDER 18 R 19(1)(d)
- [20] The Court of Appeal in *Harapan Permai Sdn Bhd v Sabah Forest Industries Sdn Bhd* [2011] 2 MLJ 192; [2011] 1 CLJ 285 explained the phrase 'abuse of the process of the court' in O 18 r 19(1)(d):
- E An 'abuse of the process of the court' arises under O 18 r 19(1)(d) where the process of the court has not been used in a bona fide manner and the process has been abused.
- F [21] In *Hadi bin Hassan v Suria Records Sdn Bhd & Ors* [2005] 3 MLJ 522; [2004] 8 CLJ 225, the court ruled that a paragraph of the plaintiff's statement of claim which was crafted based on the third defendant's written statement to the plaintiff admitting he had plagiarised a song originally written by the plaintiff was ruled as an abuse of the process of the court because it contravened the 'without prejudice' rule. The court further ruled that striking out an action
- G on the ground that it is an abuse of the process of the court under O 18 r 19(1)(d) of the ROC 2012 envisages a situation where the process of the court has not been used in a bona fide manner and that it has been abused. This stemmed from the fact that it is the duty of the court to protect its machinery from being abused and used improperly. The plaintiff had abused the process of
- H the court when he incorporated the said paragraph in his statement of claim.
- I [22] In applying the principles as laid down by the authorities cited above, this court is cognizant of the legal position that it has a legal duty to prevent any form of abuse of the court process which could fall within any of the endless and broad categories of abuse that 'will certainly proliferate pursuant to the myriad of circumstances available from the factual matrix found in each particular case': *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11; [2008] 1 CLJ 651.

[23] It is the finding of this court that the abuse as enumerated by a plethora of authorities had not been shown in this instance by the D2 against the plaintiff's action.

A

[24] At this juncture, this court reflects on the oft-repeated reminders which was re-breathed by the Court of Appeal in *See Thong & Anor v Saw Beng Chong* [2013] 3 MLJ 235; [2012] 1 LNS 817 where Their Lordships said:

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the power to strike a case under the order without having to go for trial should be exercised sparingly and only in a plain and obvious case. The procedure is of a summary nature. The party affected should not be deprived of his right to have his case proceeded by a proper trial unless the claim is obviously unsustainable.

C

[25] At the end of the day, what this court needed to do in determining the D2's application is to recall what was said by Peh Swee Chin SCJ when His Lordship delivered the decision of the Supreme Court in *Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16; [1993] 3 CLJ 606, having referred with affirmation the decision of the Privy Council in *Tractors Malaysia Bhd v Tio Chee Hing* [1975] 2 MLJ 1; [1975] 1 LNS 133, where His Lordship remarked:

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It is to be remembered that the High Court always has an inherent jurisdiction to prevent abuse of its process irrespective of whether it is expressly called for or not in an application under O 18 r 19 unless such application is limited solely to the ground that any pleading does not disclose a reasonable cause of action or defence as the case may be.

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[26] The plaintiff's claims are obviously sustainable. This court therefore concluded that it cannot allow D2's application and had dismissed encl 8 with costs.

Application dismissed with costs.

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Reported by Izzat Fauzan

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